IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2166 OF 2003

Mr. Omprakash Champalal Gupta
and another ... Applicants

versus

The State of Maharashtra and
another ... Respondents

...

Mr. Prashant D. Sawardekar, for the Applicants.
Mr. S.R. Shinde, A.P.P., for the Respondent No.1.
Mr. K.K.V. Kurup, for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

14th January 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule returnable forthwith by consent. Mr. Shinde, A.P.P., waives notice for the Respondent No. 1. Mr. Kurup waives notice for Respondent No.2. As short point is involved, petition taken up for final disposal forthwith by consent.

. The short question that arises for my consideration is: whether it is open to the Magistrate to discharge the accused even before recording of evidence?

. This question arises in the following backdrop. The Respondent No. 2 instituted criminal action against the Petitioners. On issuance of process, the Petitioners entered into the said proceedings and filed application for discharge giving several reasons in the said application. The Magistrate, however, by the impugned order dated 7th March 2003 has rejected the said application on the sole reasoning that it is not desirable to consider the application of the accused for discharge before recording of evidence. This opinion, however, overlooks the mandate of section 245(2) of the Cr.P.C. which reads thus :

> " Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

This aspect has been completely glossed over by the Magistrate, which has resulted in manifest injustice to the Petitioners. Although the Applicants intend to address this Court on merits, inter alia, on the argument that reading the complaint as a whole, no offence is made out against the Applicants, however, in my opinion, as that contention can be considered by the Magistrate on the application as filed by the Applicants, the appropriate course would be to relegate the parties before the same Court, who, in turn, shall examine the said application on its own merits in accordance with law.

. Accordingly, this application succeeds. The impugned order is set aside and the application as filed by the Applicants before the Magistrate is restored to the file of the Magistrate to its original number, who, in turn, shall finally dispose of the same on its own merits in accordance with law uninfluenced by any observation in the impugned order, or, for that matter, the present order, as expeditiously as possible, preferably within 8 weeks from today.

. Parties to act on the authenticated copy of this order.